

San Francisco Bay Conservation and Development Commission

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June 8, 2018

TO: All Commissioners and Alternates

FROM: Lawrence J. Goldzband, Executive Director (415/352-3653; larry.goldzband@bcdc.ca.gov)
Brad McCrea, Regulatory Program Director (415/352-3615; brad.mcrea@bcdc.ca.gov)
Brenda Goeden, Sediment Program Manager/LTMS (415/352-3623; brenda.goeden@bcdc.ca.gov)

SUBJECT: San Francisco Bay Restoration Authority Funding for Bay Restoration Regulatory Integration Team (BRRIT)
(For Commission information only)

On Friday, June 1, 2018, the San Francisco Bay Restoration Authority (SFBRA) unanimously approved a staff recommendation to disburse \$600,000 of SFBRA funds and to raise \$600,000 in matching funds annually to support a new “Bay Restoration Regulatory Integration Team” (BRRIT) to “improve the permitting process for multi-benefit wetland restoration projects and associated flood management and public access projects in San Francisco Bay by dedicating agency representatives to review project information for consideration as a team and process permit applications in the most efficient possible manner.” This initiative will be funded for no less than five years.

In October 2016, when the Commission recommended that the Executive Director undertake a process to develop a multi-agency permitting process to accelerate rising sea level adaptation projects, the Bay Area Council (BAC) and the Silicon Valley Leadership Group (SVLG) were operating on the same timetable. In early 2017, BAC and SVLG began to convene a group of restoration practitioners and regulatory and resource agencies to discuss how best to accelerate permitting timetables for projects funded by Regional Measure AA. The Resources Legacy Fund provided funding for the convening process and to hire a consulting firm (Dudek) to facilitate and monitor the group’s progress, which resulted in the BRRIT.

The BRRIT will consist of senior permit analysts from six state and federal regulatory agencies: BCD; San Francisco Bay Regional Water Quality Board; California Department of Fish and Wildlife; U.S. Fish and Wildlife Service; National Marine Fisheries Service; and, the U.S. Army Corps of Engineers. Its members will operate as a team to process permit applications for multi-benefit wetland restoration projects. Each agency will retain its own authority and jurisdiction. However, the agency representatives will co-locate as a team at least half-time at the Corps’ offices in San Francisco. The Corps has offered its space without charge.

The BRRIT will operate under procedures that the six agencies (and the U.S. Environmental Protection Agency) have created and adopted. The pre-application and application steps that applicants will take, along with associated completion deadlines, are described in an attachment to this memo. This multi-agency workforce is designed to work closely together, share information, identify challenges that can cause permitting delays between and among regulatory and resource agencies, and to resolve those delays quickly. (The list of issues identified to cause “sand in the gears” is attached.) Brad McCrea, Brenda Goeden, and Larry Goldzband represented BCDC during the multi-agency discussions that resulted in the agreement.

In addition to the BRRIT, managers and directors of the seven agencies have agreed to work together as a “Policy and Management Team” (PMT) to review permitting issues that need guidance and consider policy shifts recommended by the BRRIT, including those designed to reduce “sand in the gears.” The PMT will ensure that policy decisions and institutional recommendations are resolved to assist the BRRIT in its day-to-day processes. If significant policy changes are needed, the Commission would be consulted through BCDC’s regular processes.

BCDC staff plan to implement a funding agreement with SFBRA (or any other state agency that contributes to the initiative) as soon as possible so that BCDC can establish a new position that will be filled by a BCDC staff member who will be appointed as a BRRIT member. BCDC staff looks forward to being part of the BRRIT and the PMT, and we shall keep the Commission updated of their progress starting later this year.

Please do not hesitate to contact us with any questions or concerns that you may have.

SAN FRANCISCO BAY RESTORATION AUTHORITY

Staff Recommendation

June 1, 2018

BAY RESTORATION REGULATORY INTEGRATION TEAM

Project No. RA-009

Project Manager: Amy Hutzell

RECOMMENDED ACTION: Authorization to disburse up to \$650,000 annually over five years and authorization to accept and disburse up to \$600,000 of additional funds annually for five years (to be adjusted annually by the Consumer Price Index), to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Services, National Marine Fisheries Service, California Department of Fish and Wildlife, San Francisco Bay Conservation and Development Commission, and San Francisco Bay Regional Water Quality Control Board to establish and operate a Bay Restoration Regulatory Integration Team.

LOCATION: All nine San Francisco Bay Area counties

MEASURE AA PROGRAM CATEGORIES: Safe, Clean Water and Pollution Prevention Program; Vital Fish, Bird and Wildlife Habitat Program; Integrated Flood Protection Program; and Shoreline Public Access Program.

EXHIBITS

Exhibit 1: Agency Agreements and Performance Measures

Exhibit 2: Common Challenges in Permitting: Sand in the Gears

Exhibit 3: Project Letters

RESOLUTION AND FINDINGS:

Staff recommends that the San Francisco Bay Restoration Authority adopt the following resolution pursuant to The San Francisco Bay Restoration Authority Act, Gov. Code §§ 66700-66706:

“The San Francisco Bay Restoration Authority hereby authorizes the disbursement of an amount not to exceed six hundred and fifty thousand dollars (\$650,000) annually for up to five years, adjusted annually by the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (“CPI”), and acceptance and disbursement of an amount not to exceed six hundred thousand dollars (\$600,000) annually for up to five years, adjusted annually as measured by CPI, to the U.S. Army Corps of Engineers, U.S. Fish and Wildlife Services, National Marine Fisheries Service, California Department of Fish and Wildlife, San Francisco Bay Conservation and

Development Commission, and San Francisco Bay Regional Water Quality Control Board (agencies) to establish and operate a Bay Restoration Regulatory Integration Team (BRRIT). Prior to commencement of work on the BRRIT by each agency, the San Francisco Bay Restoration Authority shall enter into an agreement with each agency that includes a budget, agency responsibilities, performance measures, and the obligation of each agency to participate in the Policy and Management Team. The San Francisco Bay Restoration Authority shall annually evaluate the BRRIT, review the evaluation at a public board meeting, and make a determination whether to terminate the agreements with each agency.”

Staff further recommends that the Authority adopt the following findings:

“Based on the accompanying staff report and attached exhibits, the San Francisco Bay Restoration Authority hereby finds that:

1. The proposed authorization is consistent with The San Francisco Bay Restoration Authority Act, Gov. Code §§ 66700-66706.
2. The proposed authorization is consistent with The San Francisco Bay Clean Water, Pollution Prevention and Habitat Restoration Measure (Measure AA).”

PROJECT SUMMARY:

Staff recommends that the San Francisco Bay Restoration Authority (Authority) authorize disbursement of funds, and the acceptance and disbursement of additional matching funds; to support the formation and operation of a Bay Restoration Regulatory Integration Team (BRRIT). The objective of the BRRIT is to improve the permitting process for multi-benefit wetland restoration projects and associated flood management and public access projects in San Francisco Bay by dedicating agency representatives to review project information for consideration as a team and process permit applications in the most efficient possible manner.

The regulatory process as it exists now is one of the most significant hurdles to accelerating the pace and scale of wetlands restoration in San Francisco Bay. Project applicants face significant uncertainties in terms of the time required to secure all necessary state and federal permits. Uncertain construction schedules due to permitting and permit-associated delays slow the overall pace of wetlands restoration. Lengthy timeframes for environmental compliance and permitting also increase project costs. Projects of all scales and complexities are impacted, but project applicants with limited resources face greater challenges in navigating the regulatory system.

In addition to uncertain schedules and permitting delays, wetland restoration projects face policy challenges due to existing laws and regulations intended to protect resources. Conversion of wetland type, short-term impacts on listed species, and conflicts between wildlife and public access are three examples of policy issues that can result in regulatory delays, the need for additional analysis, and/or changes to restoration project design. *Common Challenges in Permitting: Sand in the Gears* is attached as Exhibit 2 and further details these policy issues.

With the passage of Measure AA, the restoration community has the opportunity to plan and implement an increasing number of restoration projects in San Francisco Bay. The Baylands Ecosystem Habitat Goals Science Update stresses the urgency of this work, stating that “tidal

marshes that are established by 2030 are more likely to flourish and provide ongoing benefits when the sea-level-rise accelerates in the middle of this century. The planning, permitting, and construction of restoration projects on currently available lands must be accelerated.”

Starting in early 2017, the Bay Area Council, Silicon Valley Leadership Group, and Resources Legacy Fund began convening a group of restoration practitioners and the state and federal regulatory and resource agencies to discuss ways to improve the permitting process for multi-benefit wetlands restoration projects in San Francisco Bay. Dudek, a consultant to Resources Legacy Fund, conducted an assessment of the regulatory challenges and developed a proposal for a coordinated pre-application process. Based on this work, U.S. Environmental Protection Agency (USEPA) staff facilitated a series of meetings with the six state and federal regulatory and resource agencies: San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Bay Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (DFW), U.S. Army Corps of Engineers (USACE), U.S. Fish and Wildlife Service (USFWS), and National Marine Fisheries Service (NMFS). The agencies reached agreement on a proposal, with agreements and performance measures (Exhibit 1).

The proposed coordinated permitting approach entails two teams: the BRRIT, with dedicated staff from each agency to coordinate review of projects, process permits in a timely fashion, and identify policy issues, as well as a Policy and Management Team (PMT), to review permitting issues and provide guidance on policy shifts recommended by the BRRIT. The BRRIT staff would be supported with Authority and matching funds, while the work of the PMT members would be in-kind contributions from the agencies. USACE would provide office space for the BRRIT members, also as an in-kind contribution.

Multi-benefit wetland restoration projects that are deemed eligible for Measure AA funding by the Authority staff will be able to follow the pre-application and application processes described in Exhibit 1. The pre-application process includes a pre-application meeting in which the applicant presents project information. The BRRIT will provide recommendations for expediting permitting and identify and document potential conflicts and proposed solutions. The BRRIT will conduct site visits as necessary. If projects are clear of potential issues and conflicts, applicants can move to a permit application. If conflicts are identified by the BRRIT, an additional pre-application meeting will occur, focused on resolving outstanding issues, so that project applicants can submit their application. USACE will track timelines and milestones associated with the pre-application and application process, including identification of potential conflicting requirements. The pre-application process is intended to help ensure that when permit applications are submitted, they are complete and any regulatory issues and conflicts have been resolved, unless there is a legal or regulatory conflict. The current delays in permitting are often due to permit applications being deemed incomplete due to missing information or unresolved regulatory issues. In addition, the agencies currently are not working as a coordinated team and so project conflicts can be difficult to resolve.

The BRRIT will be evaluated by the PMT and the San Francisco Bay Restoration Authority and other funders after the first six months and annually thereafter. Performance will be measured against the following:

- The BRRIT will notify project applicants with letters of application completeness or incompleteness within 30 days of receipt of permit application, at least 90% of the time.

BAY RESTORATION REGULATORY INTEGRATION TEAM

- USACE will send consultation initiation request letters to USFWS and NMFS within 15 days of receipt of adequate information from the project applicant, and USFWS and NMFS will confirm initiation of consultation within 15 days of receipt of letters from USACE, at least 90% of the time.
- Project applications for “simple” projects will be processed by the BRRIT within 120 days of receipt of the application, at least 80% of the time.
- Project applications for “complex” projects will be processed within 210 days of receipt of the application, at least 80% of the time.

“Simple” projects are projects such as those requiring a Mitigated Negative Declaration under CEQA and that have “no effect” to federal or state threatened or endangered species. “Complex” projects are projects that require an Environmental Impact Report-level under CEQA and/or that “may effect” federal or state threatened or endangered species

The PMT’s performance will be measured on their ability to deliver the following:

- A single, prioritized Permit and Policy Improvement List within 6 months of funding authorization for the BRRIT.
- Development and implementation of at least one initiative from the Permit and Policy Improvement List each year.

The Silicon Valley Leadership Group, Bay Area Council, and Resources Legacy Fund convened the agencies and organizations that developed this proposal to coordinate permitting of multi-benefit wetland restoration projects. In addition, USEPA staff facilitated meetings of the regulatory and resource agencies, USACE, RWQCB, BCDC, DFW, NMFS, and USFWS, to gain consensus on the proposal. Restoration practitioners that were involved included staff from Ducks Unlimited, Audubon California, San Francisco Bay National Wildlife Refuge Complex, State Coastal Conservancy, Santa Clara Valley Water District, and East Bay Regional Park District. The proposal was presented to the San Francisco Bay Restoration Authority’s Advisory Committee at their March 9, 2018 meeting and then taken to their May 4, 2018 meeting for a vote on recommendation of the proposal. The vote was 9 people in support and 4 opposed, with 4 abstaining because they represent an agency that could be funded. Letters are attached as Exhibit 3.

PROJECT FINANCING

San Francisco Bay Restoration Authority	up to \$650,000 annually for up to five years, adjusted annually by the CPI
Others	up to \$600,000 annually for up to five years, adjusted annually by the CPI
Project Total	up to \$1,250,000 annually for up to five years, adjusted annually by the CPI

San Francisco Bay Restoration Authority staff are investigating sources of matching funds from Santa Clara Valley Water District, State Coastal Conservancy, and others. The BRRIT will not be implemented until sufficient matching funds are secured to fund the total project cost for at least the first year.

In addition to the monetary contributions above, the six state and federal regulatory and resource agencies will provide in-kind services to staff the Project Management Team as well as office space. The value of these in-kind services is estimated to be \$242,000 in the first year, increasing each year to \$347,000 in year 5. In addition, Resources Legacy Fund anticipates that its consultant, Dudek, will continue to provide technical assistance during 2019.

CONSISTENCY WITH AUTHORITY'S ENABLING LEGISLATION, THE SAN FRANCISCO BAY RESTORATION AUTHORITY ACT:

The San Francisco Bay Restoration Authority Act (Act) establishes the Authority to raise and allocate resources for the restoration, enhancement, protection, and enjoyment of wetlands and wildlife habitats in the San Francisco Bay and along its shoreline. Gov. Code § 66702(c). The Act gives the Authority the power to enter into contracts to carry out the purpose of the Act and to grant funds for eligible projects. Gov. Code §§ 66704, 66704.5. The Act makes clear that Authority grants can cover the costs of all phases of project planning and construction. Gov. Code § 66704.5(e). The BRRIT would be funded through contracts pursuant to the Authority's explicit contracting power. The BRRIT would provide the regulatory permits that are required for eligible projects and that are typically obtained in the late planning phase of a project. The BRRIT would only be used for projects that are eligible for Measure AA funds. By expediting permitting for eligible projects, the BRRIT would help achieve restoration, enhancement, and protection of wetlands and habitats in San Francisco Bay and along its shoreline. Thus, funding the BRRIT is consistent with the Act.

CONSISTENCY WITH MEASURE AA PROGRAMS AND ACTIVITIES:

Measure AA provides that the purpose of the parcel tax is to support the "programs and priorities and purposes" of Measure AA, which are listed below. The tax revenues must be spent for those purposes in accordance with the procedures and limitations set forth in the Measure. The BRRIT is consistent with these purposes because it would support Measure AA programs by reducing delays and project costs associated with obtaining regulatory permits for projects that qualify for Measure AA grants.

Within the broader purpose of the tax to support the programs and priorities of Measure AA, the tax revenues must be spent for either "general government purposes" or "projects for the benefit of the San Francisco Bay Area." (See Measure AA Sections 3.B.6. and 3.C.3.) The BRRIT would provide an improved regulatory permitting process for Measure AA-eligible projects. The cost of permitting is typically not a government administrative cost but rather a project-related cost that is included within the scope of a grant for a project. Funding the BRRIT is akin to the Authority paying directly for a Measure AA-eligible project-related cost rather than through a grant. Further, the BRRIT as a program could be considered a project that benefits the Bay Area

by expediting restoration and addressing policy issues that delay restoration. Thus, funding the BRRIT constitutes an expenditure of the tax revenues for projects that benefit the Bay Area.

The proposed project is expected to benefit all of Measure AA's four programs:

- The *Safe, Clean Water and Pollution Prevention Program's* purpose is to remove pollution, trash and harmful toxins from the Bay in order to provide clean water for fish, birds, wildlife and people.
- The *Vital Fish, Bird and Wildlife Habitat Program's* purpose is to significantly improve wildlife habitat that will support and increase vital populations of fish, birds, and other wildlife in and around the Bay.
- The *Integrated Flood Protection Program's* purpose is to use natural habitats to protect communities along the Bay's shoreline from the risks of severe coastal flooding caused by storms and high water levels.
- The *Shoreline Public Access Program's* purpose is to enhance the quality of life of Bay Area residents, including those with disabilities, through safer and improved public access, as part of and compatible with wildlife habitat restoration projects in and around the Bay.

CONSISTENCY WITH MEASURE AA PRIORITIZATION CRITERIA:

1. **Greatest positive impact.** The BRRIT will positively impact the pace and scale of multi-benefit wetland restoration projects throughout San Francisco Bay. Coordinated permitting should accelerate the restoration community's ability to move projects through planning and into construction and allow for a larger number of projects to move forward and apply for Measure AA funds. This effort will also serve to expand the benefit of Authority support to a greater number of projects by providing improved permitting for Measure AA-eligible projects that do not end up receiving Measure AA grants.
2. **Greatest long-term impact.** The BRRIT will significantly change the way multi-benefit wetland restoration projects in San Francisco Bay are permitted, expediting permitting by having all of the agencies review in parallel and early in a project's planning and environmental review process. In addition, the PMT will address policy issues to increase efficiencies in permitting. Both the changes in the permitting process and implementation of policy improvements will have a long-term impact on restoration of San Francisco Bay.
3. **Leveraging resources and partnerships.** "See PROJECT FINANCING section above.
4. **Economically disadvantaged communities.** While the BRRIT will process permits for Measure AA-eligible projects throughout San Francisco Bay, benefitting projects large and small, there is a strong potential that this coordinated permitting process will most benefit projects that are being implemented by local agencies or nonprofits with limited capacity, including in economically disadvantaged communities. These entities have a greater challenge in navigating the permitting process due to limited staff or limited funding for

consultants. The BRRIT will also be providing workshops and public meetings to further aid entities in applying for permits for multi-benefit wetland restoration projects.

5. **Benefits to economy.** Expediting permitting and increasing the pace of multi-benefit restoration projects will positively impact the economy.
6. **Coastal Conservancy's San Francisco Bay Area Conservancy Program.** The project is consistent with the Conservancy's San Francisco Bay Area Conservancy Program's Criteria, in that it is multijurisdictional and serves a regional constituency; can be implemented in a timely way; provides opportunities for benefits that could be lost if the project is not quickly implemented; and includes matching funds from other sources of funding or assistance.

COMPLIANCE WITH CEQA:

The California Environmental Quality Act (CEQA) requires that public entities conduct environmental review prior to approving or funding a project. The CEQA Guidelines at 14 Cal. Code Regs. § 15378(b)(5) provide that the term "project" excludes organizational or administrative activities of governments that will not result in direct or indirect physical changes in the environment. The BRRIT will involve only permit review and consultation activities, which are administrative activities of governments that do not directly affect the environment. Therefore, the BRRIT is not a "project" within the meaning of CEQA and funding the BRRIT does not trigger the requirement for environmental review under CEQA.

The projects described in the applications processed by the BRRIT will undergo review under CEQA before they are funded or approved.

SAN FRANCISCO BAY COORDINATED PERMITTING APPROACH, AGENCY AGREEMENTS, AND PERFORMANCE MEASURES

PURPOSE: To improve the permitting process for multi-benefit wetland restoration projects and associated flood management and public access infrastructure in San Francisco Bay by dedicating agency representatives to review project information and prepared permit applications for consideration as a team in the most efficient manner.

BACKGROUND: Creating two joint inter-agency restoration teams - Bay Restoration Regulatory Integration Team (BRRIT) and the Policy and Management Team (PMT) - has been agreed upon during meetings held during 2017 and 2018 convened by the Resources Legacy Fund and Dudek with representatives from the US Army Corps of Engineers (Corps), National Marine Fisheries Service (NOAA Fisheries), US Fish and Wildlife Service (USFWS), San Francisco Bay Conservation and Development Commission (BCDC), San Francisco Bay Regional Water Quality Control Board (RWQCB), California Department of Fish and Wildlife (DFW), and the US Environmental Protection Agency (EPA).

WHAT: Collaboration within the multi-agency teams to ensure timely action and compliance with the following federal and state permitting authorities, including but not limited to: Clean Water Act (CWA) §404, CWA §401 Water Quality Certification, McAteer-Petris Act, Endangered Species Act & Essential Fish Habitat, California Endangered Species Act, California Water Code, CDFW 1600, San Francisco Bay Basin Plan, Suisun Marsh Preservation Act, Rivers and Harbors Act, Coastal Zone Management Act, California fully protected species.

WHERE: Multi-benefit wetland restoration projects in the San Francisco Bay and along the bay shoreline of the nine Bay Area counties, excluding the Delta Primary Zone.

WHY: The San Francisco Bay has an established tidal marsh goal of 100,000 acres, as well as goals for other wetland types, and there is a recommendation to accelerate the pace and scale of tidal marsh restoration, as tidal marshes established by 2030 are more likely to provide ongoing benefits when sea level rise accelerate at mid-century. (Baylands Goals Report, 1999 and 2015). The availability of \$500 million over the next 20 years for wetlands restoration and multi-benefit projects through the passage of Measure AA, and other funding sources, will require timely results and effectiveness of the restoration investments.

WHO:

- 1) Bay Restoration Regulatory Integration Team (BRRIT): To consist of 1.5 Full Time Employee (FTE) Corps, 1 FTE NOAA Fisheries, 1 FTE USFWS, 1 FTE BCDC, 1 FTE CDFW, 1 FTE RWQCB. (Inclusion of 1 FTE from EPA is possible on an ad hoc basis.)

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- 2) Policy and Management Team (PMT): To consist of representatives from EPA, Corps, NOAA Fisheries, USFWS, BCD, RWQCB, State Water Board, CDFW, and may include other entities as needed or suggested.

FUNDING: The estimated cost for the BRRIT is shown in the attached budget, which provides for 6 agencies to be paid for by the San Francisco Bay Restoration Authority and the Coastal Conservancy, and potentially the Santa Clara Valley Water District, East Bay Regional Park District, and others. An estimated \$278,000 will be provided through in-kind matching funds, including but not limited to USACE office space and equipment, and PMT participation. The ability to utilize funding for staff may be subject to hiring constraints applicable to individual participating agencies.

AGENCY AGREEMENTS

The following federal and state agencies agree to work together to form a coordinated permitting approach for multi-benefit wetland restoration projects in the San Francisco Bay and along the shoreline of the nine Bay Area counties, excluding the Delta Primary Zone: U.S. EPA Region 9; U.S. Army Corps of Engineers (Corps), San Francisco District; U.S. Fish and Wildlife Service (USFWS); NOAA National Marine Fisheries Service (NOAA Fisheries); San Francisco Bay Regional Water Quality Control Board (RWQCB); California Department of Fish and Wildlife (DFW); and San Francisco Bay Conservation and Development Commission (BCDC), (“the Agencies”).

The Agencies will form two teams: the Bay Restoration Regulatory Integration Team (BRRIT); and the Bay Restoration Policy and Management Team (PMT). The BRRIT will consist of dedicated staff from each agency to coordinate the review of project information to process and issue permits and other decision documents in a timely fashion. The PMT will be led by agency managers and will coordinate with the BRRIT as necessary to resolve policy issues and provide direction for any elevated project decisions. Projects will be screened for inclusion on the project list for BRRIT review by San Francisco Bay Restoration Authority staff, using the eligibility criteria for San Francisco Bay Restoration Authority funding, as described in Measure AA and associated Requests for Proposals.

AGREEMENT STANDARDS: BRRIT Commitments

By January 2019, a joint BRRIT pre-application process template and application template will be agreed upon by the agencies and used by applicants. The templates will include any necessary information required by any agency to consider a pre-application and an application.

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- 1) Agency members of the BRRIT shall be of sufficiently senior civil service rank so as to work directly with their own agency management and the permit applicants to effect substantive changes as needed to ensure project permitting is not stalled.
 - 2) The BRRIT will hold regular quarterly meetings and use agreed upon pre-application meeting procedures, which will be readily available to applicants and followed unless mutually agreed upon by the applicant and the agency team. The pre-application procedures will be conducted as follows (see attachment for further details):
 - a. Pre-Application Meeting Step 1
 - i. Applicant will use the pre-application template to submit project information no less than 14 calendar days prior to a regularly-scheduled BRRIT pre-application meeting.
 - ii. The BRRIT will review the project information and formulate questions and/or recommendations regarding project design, and avoidance, minimization, and other potential measures that would help to expedite permitting, will identify potential interagency conflicts, collectively examine possible approaches to solutions, and be prepared to provide direction and/or to recommend such solutions in writing at the Pre-Application Meeting Step 1.
 - iii. As part of Pre-Application Meeting Step 1 (Applicant can request Pre-Application Step 1 meetings be repeated as necessary):
 1. Applicant will present project information and respond to agency questions.
 2. The BRRIT will provide recommendations that will expedite permitting, and will identify potential interagency conflicts and propose solutions. The team will also explain how proposed solutions are derived citing regulatory and statutory requirements, as necessary, to provide a fully transparent process for the applicants. The BRRIT will document discussion of conflicts and proposed solutions.
 3. The BRRIT may conduct a site visit prior to the Pre-Application Meeting Step 2 to further understand potential conflicts and solutions and to provide more meaningful direction.
 - iv. If the BRRIT finds the project as proposed is clear of potential issues and conflicts, they will recommend the applicant's next step is to submit a permit application, Step 3 of the process.
 - v. If the BRRIT identifies potential conflicts and/or solutions, including interagency conflicts and solutions that would need project revisions, the team will recommend the applicant's next step is to update project information, in response to comments

received, and present the revised proposal to the BRRIT Team at Pre-Application Meeting Step 2.

- vi. If there are agency substantive issues and/or conflicts remaining that are law- or policy-driven, the BRRIT will document the issue(s) in a letter to the applicant and the PMT, citing the issue(s), the specific law(s) and/or regulation(s) with which the project is not in compliance, and provide recommendations for resolution.

b. Pre-Application Meeting Step 2

- i. Applicant will update project description and address identified conflicts. Applicant will submit updated project description no less than 14 calendar days prior to Pre-Application Meeting Step 2.
- ii. Step 2 Meeting
 - 1. Applicant will present updated project information.
 - 2. Applicant and the BRRIT will resolve outstanding pre-application issues. All substantive project issues and conflicts that are not law- or policy-driven (i.e., permitting of project is not prohibited by existing laws or regulations) shall be resolved at this stage.

c. Application Stage Step 3

- i. The guidance provided by BRRIT in the pre-application procedures will guide the review of project applications consistent to the maximum extent possible with applicable federal and state laws, regulations, and policies.
 - ii. If any agency representative on the BRRIT identifies that a change in guidance is warranted due to a new issue, which must be a significant and unavoidable matter of their agency's law or policy, that would result in a change in previous agency guidance, that agency representative will identify the substantive issue(s) and elevate it to the PMT representative within their specific agency. If the PMT representative confirms that a change in guidance is significant and warranted (i.e., unavoidable matter of law or policy), the BRRIT and the applicant will be notified immediately to set up a meeting to discuss potential solutions. The BRRIT team member generating the issue will lead the process to alter the application and resolve any problems.
 - iii. Application review timelines shall be in accordance with the permitting coordination timelines described in this document at the *BRRIT Performance Measures: Permitting Coordination Timelines* Sections (1) through (4)
- 3) The Corps, in concert with BRRIT, will initiate appropriate, real-time tracking of timelines and other administrative milestones starting with the pre-application process through

permit application completion. This will include identifying potential conflicting requirements, and dates of significant interaction with applicant (e.g. document submittal, meetings, etc.). Information tracked will be provided to the funders and applicants on a quarterly basis.

- 4) If major decisions on permit applications would change the overall project or if permit denial is contemplated, the BRRIT will immediately set up a meeting with the applicant to discuss and will inform the PMT.
- 5) Agency members of the BRRIT shall attend pre-application meetings and project site tours as relevant to agency jurisdiction.
- 6) Agency members of the BRRIT shall make every effort to have their respective BRRIT members at USACE offices in San Francisco a minimum of 2.5 days per week. However, agency members of the BRRIT shall meet at the USACE offices in San Francisco a minimum of 5 days per month. BRRIT members will confer regularly on pre-applications and applications.
- 7) BRRIT will conduct outreach to permittees and interested parties as appropriate.

BRRIT PERFORMANCE MEASURES: Permitting Coordination Timelines

- 1) Upon completion of the pre-application process, the project applicant will submit its permit application. Within thirty (30) calendar days of receipt of permit applications, the BRRIT will coordinate their separate agency response letters notifying the project applicant of application completeness or incompleteness. If an agency letter indicates “incompleteness”, the letter will identify specific additional information needed to complete the permit application(s). The BRRIT shall provide such notification within the stated time frame at least 90% of the time.
- 2) USACE will send federal Endangered Species Act Section 7 consultation initiation request letters and Section 106 consultation initiation letters within fifteen (15) days of receiving adequate information from the project applicant to make a determination of effect and initiate consultation. The USFWS and NMFS will confirm initiation of consultation within fifteen (15) days of receiving the Corps’ initiation request letter. The BRRIT shall provide initiation requested letters within the stated time frame at least 90% of the time.
- 3) Project applications for “simple projects” (e.g. such as those requiring a Mitigated Negative Declaration level of CEQA review and that have “no effect” to federal or state threatened or endangered species) will be processed within 120 days of receiving an application. The BRRIT shall process simple applications within the stated time frame at least 80% of the time.

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- 4) Project applications that require an Environmental Impact Report-level of CEQA review and/or “may effect” federal or state threatened or endangered species will be processed within 210 days of receiving an application. The BRRIT shall process complex applications within the stated time frame at least 80% of the time.

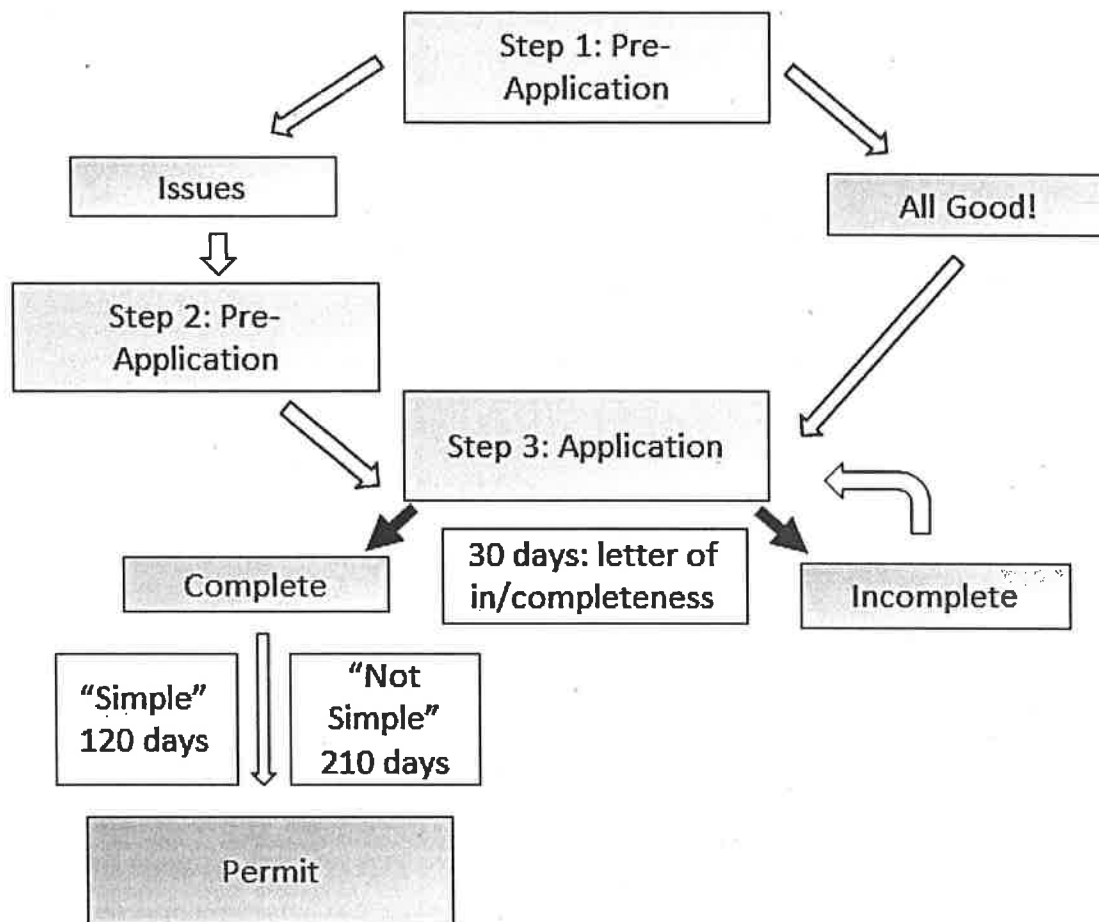
AGREEMENT STANDARDS: PMT Commitments

- 1) Agency members of the PMT shall be senior managers with the ability to make management decisions, permit decisions, and coordinate policy changes within their agency.
- 2) The BRRIT will be evaluated by PMT, the San Francisco Bay Restoration Authority and other funders, after its first six (6) months and annually thereafter, to assess performance against the performance measures listed above.
- 3) The PMT will create a system for achieving the policy deliverables identified in the *PMT PERFORMANCE MEASURES: Policy Deliverables* Sections (1) and (2), below. The system will identify policy issues and policy conflicts, include an outline and timeline for resolving the issues presented to them by the BRRIT, and identify a process for elevating issues that require agency policy shifts.

PMT PERFORMANCE MEASURES: Policy Deliverables

- 1) Each agency will actively participate in the development of a single prioritized list of initiatives (Permit and Policy Improvement List) to increase efficiency in permit review and/or resolving policy issues that have been identified as limiting flexibility in the design and permitting of multi-benefit restoration projects (based on the attached “Sand in the Gears” document, known permit efficiencies, 2016 USACE/EPA Collaboration Memo, FAST-41 Act, etc). This list shall be developed within six months of authorization of funding by the San Francisco Bay Restoration Authority, if not earlier.
- 2) Upon establishment of the Permit and Policy Improvement List, at least one (1) initiative identified on the list (in the form of standard operating procedures, new or revised policy, memorandum of agreement, memorandum of understanding, or other agency-to-agency agreement or initiative) shall be developed and implemented within one (1) year. Thereafter, at least one (1) initiative identified from the list will be developed and implemented annually.

Figure 1. BRRIT Process Flow Chart



San Francisco Bay Multi-Benefit Wetlands Restoration

Common Challenges in Permitting:

"Sand in the Gears"

April 27, 2018

Following the 19 January 2018 meeting of the federal and state agencies working to develop a coordinated permitting approach for multi-benefit wetlands restoration projects in the San Francisco Bay, John Bourgeois of the South Bay Salt Pond Restoration Project, at the request of Larry Goldzband of BCDP, put together a brief description of some of the common policy conflicts between agencies that have resulted in a slow-down in the permitting process.

1. Type Conversion

Large-scale restoration projects are often converting one 'type' of Waters of the State/U.S. to another 'type' (e.g., salt ponds into tidal marshes). Varying amounts of fill are often required (for features such as flood risk reduction, habitat complexity, perimeter trail improvements, etc.) to produce large areas of habitat conversion. This can result in a net loss of Waters, and therefore be interpreted by agency staff as necessitating mitigation for voluntary restoration efforts.

2. Public Access

Different agencies have different goals pertaining to public access. Some agencies ask project proponents to maximize public access, while other agencies ask us to minimize it to protect habitat values. Both perspectives have value, but the burden to resolve these conflicts often falls on the applicant to justify their position to each agency, and resolve these conflicts in an often long and iterative process. Beyond this, the landowner may be a resource agency charged specifically with protecting particular species and habitats where public access may conflict.

3. Bay Fill

The creation of Habitat Transition Zones (i.e., ecotones or horizontal levees) via the import of fill material causes conflict with Bay fill policies, which can vary by agency. For example, BCDP asks projects to use the minimum fill required to achieve the project goals, while the RWQCB might ask a project to build in more resilience to the transition zone. With little empirical data to support optimal design, these conflicts are challenging to resolve. To a lesser extent this is also true of habitat features such as islands for nesting birds. Agencies are beginning to address this issue already.

4. Single-Species Perspective

Legal requirements for a single protected species can preclude actions that are deemed beneficial to the larger system by all other agencies. In an urban estuary, multi-objective projects intended to achieve a balance between a range of habitat improvements for individual special-status species and a wide range of general habitat enhancements over a broad area. For example, Snowy Plover habitat needs can preclude tidal restoration in certain areas, and concerns over fish entrapment can prevent certain types and locations of habitat connectivity.

5. Monitoring

Existing and perhaps increasing requirements for regionally relevant monitoring are sometimes in conflict with the site-specific needs, resulting in additional monitoring burden for applicants. Regional monitoring can be expensive and difficult to find funding sources to cover the costs. Limiting mandated monitoring requirements to the minimum required for the regulatory agencies to determine that permits are in compliance would allow projects to invest more in infrastructure. Project proponents are typically unable to sustain significant monitoring programs on their own, therefore monitoring should be targeted to actionable

information. Additional monitoring to address regionally relevant issues beyond the project footprint should be shared through a regional monitoring program or similar arrangement.

6. Uncertainty

Agencies often want to see certainty in the quantification of project outputs. However, large-scale voluntary restoration projects often have some degree of uncertainty in the timing and degree of outcome (especially in light of sea level rise and varying suspended sediment concentrations). Regulatory requirements for certain outcomes can discourage experimentation, which could help advance the knowledge of the restoration community. Different agencies have different risk tolerances, and therefore it always comes down to the most conservative agency setting the bar.

7. Level of Design

Agencies often ask for detailed design. But if we spend that money doing advanced design, it is harder to change course in response to agency input. Different agencies have different tolerances for the level of design needed to acquire a permit. Also in the event that final design must be submitted for the permit authorization to be valid, this can result in 45 day or longer time delays for additional permit coordination.

8. Lack of Deference

Agencies can assign additional requirements on habitats/species/water quality/etc. beyond those required by the agency that is primarily responsible of that specific resource. For example, one agency might require additional BMP's to protect the salt marsh harvest mouse beyond what is outlined in the BiOp from the USFWS.

9. Sea-Level Rise

Some agencies have requirements to include long-term planning for expected sea-level rise (SLR). This type of planning is critical for development projects and public infrastructure projects; however, restoration projects generally have a different long-term intent than those required to include SLR in their planning. A restoration project generally seeks to establish a dynamic natural environment that would evolve over time in response to changes such as those involved in SLR. Requiring them to develop and install structures that are adapted to long-term SLR effects may in some cases undercut the primary intent of the restoration.

10. Short-Term Impacts vs. Long-Term Benefits

Agencies necessarily and appropriately require careful analysis and disclosure of construction impacts and even short-term habitat losses that must be weighed against the magnitude, timing, and certainty of long-term benefits. The long-term benefits of a project are not always evaluated when short term minimization and avoidance measures are required. This is particularly true for noise- and other short-term disturbance effects (less so for actual habitat changes like excavating a channel through the marsh to connect the slough with a pond interior).